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ABSTRACT

This paper describes the content of two major laws affecting special education, identifies the agencies charged with their implementation, and provides a list of resources that address specific questions about these laws and their application in special education. The first law, Section 504 of the Rehabilitation Act of 1973, prohibits discrimination against persons with disabilities in any program or activity that receives financial assistance from the U.S. government. It guarantees an appropriate special education as well as accessibility to regular education programs and applies to all persons with disabilities regardless of age. The second law, the Americans with Disabilities Act of 1990, extends protection from discrimination to private sector and state and local government activities. It has four titles dealing with employment, public services, public accommodations, and telecommunications. Two lists conclude the paper: one provides information on 16 organizational resources, and the other provides addresses for the 10 regional offices of the U.S. Office for Civil Rights. (JDD)

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Legal Foundations
Number 1

Fall 1992

Section 504 of The Rehabilitation Act of 1973 and The Americans with Disabilities Act of 1990

Many educators have questions about special education laws, and there are many resources available to them. However, learning where to get the answer to a specific question about a law can be difficult and confusing. This is the first in *Legal Foundations*, a series of short papers that briefly describe the content of the major laws affecting special education, identify the agencies charged with their implementation, and provide resources that address specific questions about these laws and their application in special education.

THE REHABILITATION ACT OF 1973, P.L. 93-112

Title V of the Rehabilitation Act of 1973 is a civil rights mandate for persons with disabilities. It prohibits discrimination against persons with disabilities in any program or activity that receives financial assistance from the U.S. government.

Title V contains five sections:

Section 501 requires federal agencies to have affirmative action programs to hire and promote qualified persons with disabilities. The U.S. Equal Employment Opportunity Commission is the lead agency in implementing this Section.

Section 502 requires all buildings constructed with federal funds or owned or leased by federal agencies to be accessible and usable by people with physical disabilities. The lead agency for implementation is the U.S. Architectural and Transportation Barriers Compliance Board.

Section 503 requires all government contractors to have affirmative action programs for persons with disabilities. Plans must include hiring, assigning jobs, promoting, training, transferring, and terminating workers with disabilities as well as maintaining accessibility and appropriate working conditions. The lead agency for implementation is the Employment Standards Administration, U.S. Department of Labor.

Section 504 prohibits discrimination against persons with disabilities in all programs and

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- activities conducted by recipients of federal financial assistance. In matters pertaining to education, the lead agency is the Office for Civil Rights, U.S. Department of Education.

Section 505 provides attorney's fees to prevailing citizens, at the discretion of the court, in a proceeding to enforce the provisions of Title V. This section was added in the 1978 amendments.

Section 504 has the substantial impact on education, since educational programs for students with disabilities must be equal to those provided to others. Educational agencies that receive U.S. Department of Education funds, either directly or indirectly, are considered recipients. Section 504 states:

> No otherwise qualified handicapped individual...shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. (29 U.S.C. 794)

Section 504 applies to all persons with disabilities regardless of age. It covers preschool and adult programs as well as elementary and secondary education, requiring *equal and accessible* transportation, architecture, educational programs, and nonacademic services. Graduation and textbook standards may not be discriminatory, nor may evaluation systems. Different treatment is justified only if it is necessary to provide services to persons with disabilities that are as effective as those provided to others.

Section 504 guarantees an appropriate special education as well as accessibility to regular education programs. It requires that all handicapped children be provided a free, appropriate public education in the least restrictive environment. A handicapped person under Section 504 is *any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.* This definition differs from that found in the Individuals with Disabilities Education Act (IDEA), which defines specific disabling conditions. Because of this difference, some individuals who are not qualified for special education under IDEA may be qualified for special services under Section 504. In addition to students who are eligible under the definition of Section 504 but not under the definition of IDEA, there may also be students who have a disability according to both definitions but do not require special education. For example, a student who uses a wheelchair may be qualified under both definitions. He may not require special education, but the student may require special accommodations under Section 504.

Like IDEA, Section 504 requires identification, evaluation, provision of appropriate services, notification of parents, an individualized accommodation plan, and procedural safeguards. These activities must be performed in accordance with Section 504 regulations, which have some requirements that differ from those of IDEA.

The Office for Civil Rights (OCR), U.S. Department of Education, is the enforcing agency for Section 504. In addition to other activities, OCR conducts compliance reviews and investigates complaints. It has 10 regional offices to answer questions, provide technical assistance, and investigate complaints. Addresses are listed at the end of this paper. Section 504 includes administrative complaint procedures, which can help to avoid costly court actions. Federal funds for an agency that is not in compliance with Section 504 may be terminated.

OCR's enforcement of Section 504 places a high priority on cases that involve exclusion from school or reveal a pattern of discrimination. OCR has recently identified some widespread practices that result in services for students with disabilities that are not comparable to those provided to nondisabled students. Two areas in particular stand out: transportation and facilities. Transportation schedules must not cause students with disabilities to spend appreciably more time on buses than students without disabilities; arrival and departure times must not reduce the length of the school day. The bus rides of students with disabilities should not be much longer than those of nondisabled students.

Facilities for students with disabilities must be comparable to those provided for students without disabilities. For example, classes for students with disabilities should not be held in storage rooms, partitioned offices, or other inappropriate locations. Room sizes must be adequate to accommodate the educational, physical, and medical needs of the students. Teachers of students with disabilities must be provided adequate support and supplies to give their students an education equal to that of students without disabilities. If teachers of students without disabilities receive clerical support, teachers of students with disabilities must also receive clerical support. These areas are a current focus of OCR.

THE AMERICANS WITH DISABILITIES ACT OF 1990, P.L. 101-336

The protection from discrimination that was provided in federally funded activities by Title V of the Vocational Rehabilitation Act was extended to private-sector and state and local government activities by The Americans with Disabilities Act (ADA). ADA contains four titles, and most of its provisions have already gone into effect. Instances in which they have not already gone into effect are noted below.

Title I: Employment. Employers with 15 or more employees may not discriminate against qualified individuals with disabilities. They must reasonably accommodate the disabilities of qualified applicants or employees unless undue hardship would result. This title is in effect for employers of more than 24 people; for employers of 15 to 24 persons, it goes into effect June, 1994. It is administered by the U.S. Equal Employment Opportunity Commission.

Title II: Public Services. State and local governments may not discriminate against qualified individuals with disabilities. New construction and alterations to existing facilities must be accessible. Existing facilities must meet program accessibility requirements consistent with

Section 504. New buses and rail vehicles must be accessible. The lead agencies for Title II are the U.S. Department of Justice and the U.S. Department of Transportation.

Title III: Public Accommodations. Privately owned public accommodations such as restaurants, hotels, theaters, stores, doctors' offices, parks, private schools, and day-care centers may not discriminate on the basis of disability. Physical barriers must be removed if removal is readily achievable; otherwise, alternative methods of providing services must be offered. New construction and alterations to existing construction must be accessible. (New construction applies to buildings ready for occupancy by January, 1993.) New buses and other vehicles operated by private entities must be accessible or the system must provide service equivalent to that provided to the general public. Lead agencies for Title III are the U.S. Department of Justice and the U.S. Department of Transportation.

Title IV: Telecommunications. Telephone companies must provide telecommunications relay services for hearing impaired and speech impaired persons 24 hours per day. Title IV goes into effect July 26, 1993. The Federal Communications Commission is the lead agency for implementation.

ADA's definition of an *individual with disabilities* is the same as Title V's definition of a handicapped person. Table 1 provides a brief recap of the agencies responsible for implementing ADA.

The legislation discussed here has immense implications for students with disabilities. They need to be taught about their rights under ADA and Title V, for they and their advocates are the ones who will insist that these rights become realities. They must also be prepared by their educators to fully enjoy the opportunities newly opened to them. Not only will they have increased options for employment, but also a means to get to and from work and the access to public places that they will need to be fully involved members of their communities. As special educators, it is up to us to help them obtain the knowledge they will need for this involvement. We have already begun by emphasizing practices and programs such as mainstreaming and transition. We can only imagine the impact on programs and practices that this legislation will have in coming years.

Table 1. Lead Agencies for Implementing ADA

Title I: Employment	U.S. Equal Employment Opportunity Commission
Title II: Public Services	U. S. Department of Justice U.S. Department of Transportation
Title III: Public Accommodations	U.S. Department of Justice U. S. Department of Transportation
Title IV: Telecommunications	Federal Communications Commission

RESOURCES SPECIFIC TO SPECIAL EDUCATION

Children's Defense Fund, 122 C St., N.W., Washington, DC 20001. 202-628-8787. *94-142 and 504: Numbers That Add Up to Educational Rights for Children with Disabilities.*

The Council for Exceptional Children, 1920 Association Drive, Reston, VA 22091-1589. 703-620-3660 (Voice/TDD). 703-264-9494 (FAX). *Public Law 94-142, Section 504, and Public Law 99-457: Understanding What They Are and Are Not.* (P196). Americans with Disabilities Act of 1990: What Should You Know? Supplement to *Exceptional Children, 57*(2), 1990.

Council of Administrators of Special Education, Inc. (CASE), 615 16th St., NW, Albuquerque, NM 87104. *Student Access, A Resource Guide for Educators. Section 504 of the Rehabilitation Act of 1973.*

Learning Disabilities Association, 4156 Library Rd., Pittsburgh, PA 15234. *A Guide to Section 504; How It Applies to Students with Learning Disabilities and ADHD.*

National Clearinghouse on Postsecondary Education for Individuals with Disabilities, Suite 800, One DuPont Circle, N.W., Washington, DC 20036-1193. 800-544-3284 (Voice/TDD). ADA/504 and Institutions of Higher Education, *Information from HEATH, 11*(1), 1992.

National Information Center for Children and Youth with Disabilities, P.O. Box 1492, Washington, DC, 20013-1492. 800-999-5599. Related Services for School-Aged Children with Disabilities, *News Digest, 1*(2), 1991.

PACER Center, Inc. 4826 Chicago Ave., S. Minneapolis, MN 55417-1055. 612-827-2966 (Voice/TDD). Laws That Affect Children with Disabilities, in *Count Me In. Resource Manual on Disabilities.* (1991).

U.S. Department of Education, Office for Civil Rights, Washington, D.C. 20202-1328. 202-205-8686. Free booklets: *The Guidance Counselor's Role in Ensuring Equal Educational Opportunity, The Rights of Individuals with Handicaps Under Federal Law, Auxiliary Aids and Services for Postsecondary Students with Handicaps, Placement of School Children with AIDS, Discipline of Handicapped Students in Elementary and Secondary Schools.*

RESOURCES NOT SPECIFIC TO SPECIAL EDUCATION

Americans with Disabilities Act-Communication Accommodations Project (ADA-CAP), a joint information service of The American Foundation for the Blind (AFB) and the National Center for Law and Deafness (NCLD) at Gallaudet University. Provides free legal advice and technical assistance from disability lawyers and paraprofessionals. Publications for individuals with vision or hearing loss and for the hospitality and health care industries are also available, as well as a video in American Sign Language. AFB: 202-223-0101 (Voice/TDD); NCLD: 202-651-5343 (Voice/TDD).

Center for Psychiatric Rehabilitation, Boston University, 730 Commonwealth Ave., Boston, MA 02215. The Americans with Disabilities Act: Implications for People with Psychiatric Disabilities, in *Community Support Network News*, December, 1991. Available for $7.00.

National Easter Seal Society, 70 East Lake St., Chicago, IL 60601. 312-726-6200 (Voice) 312-726-4258 (TDD). *Americans with Disabilities Act Resource Catalog*. Includes *Americans with Disabilities Act Checklist*, and *Nobody's Burning Wheelchairs* (video).

National Organization on Disability, Suite 600, 910 16th St., N.W., Washington, DC 20006. 202-293-5960 (Voice); 202-293-5968 (TDD); 202-293-7999 (FAX). *The Americans with Disabilities Act of 1990: Fact Sheet.*

The President's Committee on Employment of People with Disabilities, Suite 636, 1111 20th St., N.W., Washington, DC 20036. 202-653-5044 (Voice); 202-653-5050 (TDD); 202-652-7386 (FAX). *Worklife, Special Issues on the Americans with Disabilities Act, 3*,(3) & (4), 1990. PCED also runs the Job Accommodation Network, which develops, collects and disseminates information on making reasonable accommodation without excessive cost. 800-526-7234 (Voice/TDD). 800-526-4698 (Voice/TDD; West Virginia residents only).

U.S. Architectural and Transportation Compliance Board, 1111 18th St., N.W., Suite 501, Washington, DC 20036. 800-USA-ABLE (Voice or telephone text). *Americans with Disabilities Act Fact Sheet, ADA Accessibility Guidelines, Uniform Federal Accessibility Standards.*

U.S. Equal Opportunity Employment Commission. To order publications, call 800-669-EEOC (Voice); 800-800-3302 (TDD). The text of the ADA and a supplemental ADA regulations handbook are available in Braille, large print, audiotape, and computer disk and on electronic bulletin board (202-514-6193). Published jointly with the U.S. Department of Justice, Civil Rights Division. To order by mail, see address below.

U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, P.O. Box 66118, Washington, D.C., 20035-6118. 202-514-0301 (Voice); 202-514-0381 (TDD).

Regional Offices of the U.S. Office for Civil Rights

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Office for Civil Rights, Region I
U.S. Department of Education
J. W. McCormack Post Office and Courthouse
Room 222, 01-0061
Boston, MA 02109-4557
617-223-9662 (Voice); 617-223-9695 (TDD)

Region II: New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza, 33rd Floor
Room 33-130, 02-1010
New York, NY 10278-0082
212-264-4633 (Voice); 212-264-9464 (TDD)

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Office for Civil Rights, Region III
U.S. Department of Education
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Philadelphia, PA 19104-3326
215-596-6772 (Voice); 215-596-6794 (TDD)

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Office for Civil Rights, Region IV
U.S. Department of Education
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Atlanta, GA 30301-2048
404-331-2954 (Voice); 404-331-7816 (TDD)

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Office for Civil Rights, Region V
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401 South State Street
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312-886-3456 (Voice); 312-353-2541 (TDD)

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Region IX: California	Office for Civil Rights, Region IX U.S. Department of Education Old Federal Building 50 United Nations Plaza Room 239, 09-8010 San Francisco, CA 94102-4102 415-556-7000 (Voice); 415-556-6806 (TDD)
Region X: Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Pacific Islands	Office for Civil Rights, Region X U.S. Department of Education 915 Second Ave. Room 3310, 10-9010 Seattle, WA 98174-1099 206-553-6811 (Voice); 206-553-4542 (TDD)

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